

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Second Periodic Review of the)	MB Docket No. 03-15
Commission's Rules and Policies)	
Affecting the Conversion)	RM 9832
To Digital Television)	
)	
Public Interest Obligations of TV)	MM Docket No. 99-360
Broadcast Licensees)	
)	
Children's Television Obligations of)	MM Docket 00-67
Digital Television Broadcasters)	
)	
Standardized and Enhanced)	MM Docket No. 00-168
Disclosure Requirements for)	
Television Broadcast Licensee)	
Public Interest Obligations)	



Initial Regulatory Flexibility Analysis Comments

On behalf of more than 1,000 independent cable companies, the American Cable Association (“ACA”) submits these comments in response to the Initial Regulatory Flexibility Analysis (“IRFA”) appended to the NPRM.¹ Together, ACA member companies serve about 7.5 million cable subscribers. The companies range from family-run cable businesses serving a single town to multiple system operators with small systems that focus on small markets. About half of ACA’s members serve fewer than 1,000 subscribers. All ACA members face the

¹ *In the Matter of Second Periodic Review of the Commission’s Rules and Policies Affecting the Conversion To Digital Television*, Notice of Proposed Rulemaking, FCC 03-8, MB Docket No. 03-15 (rel. Jan. 27, 2003) (“Second DTV NPRM”), Appendix A, “Initial Regulatory Flexibility Analysis”.

challenges of developing and operating broadband networks in lower density markets, including the challenges of the DTV transition.

ACA and its members have consistently supported the Commission's efforts to advance the DTV transition, and we will continue to do so. ACA members are at the forefront in delivering advanced services, like cable modem service and digital cable service, to smaller markets. Within the past six months, several ACA member systems have begun to deliver broadcaster's DTV signals in smaller markets. Many more ACA members are actively exploring and planning how to deliver DTV signals in their markets.

At the same time, ACA members fear the consequences if the DTV transition is forced upon their businesses and their customers prematurely. In short, the Commission's DTV transition regulations must accommodate the unique circumstances and higher cost structures of smaller systems. If not, hundreds of smaller cable systems and hundreds of thousands, *even millions*, of smaller market consumers could lose access to local broadcast signals.

As described in more detail in ACA's Comments filed in MB Docket 03-15², facilitating the DTV transition in smaller markets will require a combination of inter-industry cooperation and careful regulatory oversight by the Commission. The Commission must continue to resist the call for "one-size-fits-all" regulations. To address the special circumstances of smaller cable companies, ACA asks that the Commission address the following issues:

- The disproportionate cost of the DTV transition for smaller cable systems due to headend and set-top box costs.
- The disproportionate burden of dual must-carry for smaller cable systems due to more limited channel capacity.
- The unwillingness of some broadcasters to deliver an adequate quality DTV signals to outlying areas of their markets.
- The continuing abuse of retransmission consent of a handful of media conglomerates, which is constraining channel capacity, raising costs, and hampering small systems ability to develop solutions to DTV carriage.

² *Second DTV NPRM*, Comments of ACA (filed April 21, 2003).

The Regulatory Flexibility Act requires the Commission in its initial regulatory flexibility analysis to describe the impact of the proposed rule on small entities.³ The IRFA must contain a description of any significant alternatives to the proposed rule that would accomplish the stated objective of the statute and that would minimize any significant economic impact of the proposed rule on small entities.⁴ An example of an alternative includes an “exemption from coverage of the rule, or any part thereof, for such small entities.”⁵

The Commission has a statutory obligation to consider the impact any Commission action would have on small entities. Economic realities require the Commission to establish an alternative treatment for small cable companies. Because of the impact to small cable as discussed above and in ACA’s Comments, the Commission must address these issues and include a comprehensive discussion of the impact its actions will have on small cable in its Final Regulatory Flexibility Analysis.

Respectfully submitted,

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April 21, 2003

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³ 5 USC § 603(a).

⁴ 5 USC § 603(c).

⁵ 5 USC § 603(c)(4).